

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**RODNEY SIMMONS**

**APPELLANT,**

**v.  
STATE OF MISSOURI**

**RESPONDENT.**

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DOCKET NUMBER WD78943

DATE: October 25, 2016

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Appeal From:

Jackson County Circuit Court  
The Honorable David M. Byrn, Judge

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Appellate Judges:

Division One: Thomas H. Newton, Presiding Judge, Cynthia L. Martin, Judge and Edward R. Ardini, Jr., Judge

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Attorneys:

Damien S. De Loyola, Kansas City, MO, for appellant.

Christine K. Lesicko, Jefferson City, MO, for respondent.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**RODNEY SIMMONS,**

**APPELLANT,**

**v.**

**STATE OF MISSOURI,**

**RESPONDENT.**

No. WD78943

Jackson County

Before Division One: Thomas H. Newton, Presiding Judge, Cynthia L. Martin, Judge and Edward R. Ardini, Jr., Judge

Rodney Simmons ("Simmons") appeals from the denial of his Rule 24.035 motion following an evidentiary hearing. Simmons argues that his claim of ineffective assistance of counsel was not refuted by the record as found by the motion court and that counsel was ineffective for failing to adequately advise him about the defense of diminished capacity.

**AFFIRMED**

**Division One holds:**

1. The motion court did not clearly err in concluding that plea counsel and the plea court addressed the diminished capacity defense with Simmons, and that Simmons understood and waived the defense.
2. Simmons's contention that his waiver did not extend to use of an "imperfect" diminished capacity defense to permit submission of a lesser included instruction on involuntary manslaughter is without merit as no Missouri court has recognized an imperfect diminished capacity defense for this or any purpose.

Opinion by Cynthia L. Martin, Judge

October 25, 2016

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